IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1037 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGRUTIBEN WD/O KAMLESHBHAI AMBALAL GAJJAR & 2 - Appellant(s)
Versus
GURMEJSING TEJASING SHIKH DELETED & 5 - Defendant(s)

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Appearance :
MR MTM HAKIM for Appellant(s) : 1 - 3.
DELETED for Defendant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 4,
MR RAJNI H MEHTA for Defendant(s) : 2-3,
UNSERVED-EXPIRED (N) for Defendant(s) : 5 - 6.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 21/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the judgment and award dated 12th June, 2001 made in Motor Accidents Claim Petition No. 802/93 by the Motor Accidents Claims Tribunal (Main), Vadodara, the appellants – original claimants – have approached this Court by way of this appeal.

2. Appellant No.1 is the widow of late Kamleshbhai Ambalal Gajjar, whereas appellants Nos 2 and 3 are minor sons of appellant No. 1 and deceased Kamleshbhai Gajjar. The appellants-claimants had claimed Rs. 40 lakhs by way of compensation on account of sad demise of late Kamleshbhai in the accident. The appellants-claimants had submitted before the Tribunal that on 12th November, 1992, around 2 a.m., deceased Kamleshbhai was travelling in a maruti car bearing Regn. No. GJ-5-A-4157 towards Baroda alongwith another person. The deceased was driving the vehicle on its correct side and at that time a truck bearing Regn. No. PB-09-1863, which was driven rashly and negligently, came from the other side. The truck turned turtle and dashed with the maruti car. On account of the accident, serious injuries were inflicted upon the deceased and the deceased, who was 32 years old building contractor, succumbed to the injuries.

3. It was stated in the claim petition that the deceased was earning Rs. 30,000/- per month and he was also paying income tax. Minor children of the

deceased, who are appellants Nos. 2 & 3 were given education in a good school by the deceased. For the aforesaid reasons, compensation of Rs. 40 lakhs had been claimed.

4. After considering the evidence adduced before the Tribunal, the Tribunal awarded Rs. 4,20,000/- to the claimants alongwith interest @ 9% from the date of the application till realisation of the said amount with proportionate costs.

5. Learned advocate Shri MTM Hakim appearing for the appellants-claimants has vehemently submitted that the amount of compensation awarded by the Tribunal is very meagre. It has been also submitted by him that the Tribunal did not properly appreciate the evidence adduced before it and did not calculate the amount of compensation correctly and, therefore, the appeal should be allowed and higher amount of compensation should be awarded to the appellants.

6. So as to substantiate his case, learned advocate Shri Hakim has submitted that the Tribunal ought to have appreciated that the deceased was a contractor and he was also in the business of constructing buildings and developing societies. It has been submitted by him that children of the deceased, namely, appellants Nos. 2 & 3, were studying in a very good school. Substantial amount of fees was being paid by the deceased for their education. It has been submitted by him that the deceased was owner of a car and as he belonged to an upper class society, the Tribunal ought to have awarded

compensation to the appellants on the basis that the deceased was earning Rs. 30,000/- per month. According to him, the Tribunal has materially erred by coming to the conclusion that monthly income of the deceased would have been Rs. 3,000/- and upon deducting 1/3rd thereof by way of personal expenses, monthly dependency available to the appellants was worked out to Rs. 2,000/-. It has been submitted by him that the deceased was earning much more than Rs. 3,000/- but, unfortunately, the Tribunal did not consider relevant factors and has erred by awarding such a meagre amount of compensation.

7. By relying upon the sale deeds placed on record of the lands proposed to be developed by the deceased, it has been submitted by the learned advocate that the Tribunal ought to have considered the fact that the lands, which were to be developed by the deceased, would have resulted into substantial profit for the deceased.

8. It has been also submitted by him that even the assessment order in respect of Assessment Year 1990-91 (accounting year 1989-90) revealed that the firm in which the deceased was a partner, had earned profit of Rs. 1 lakh per annum, and according to him, share of the deceased was of the said amount of Rs. 1 lakh. Considering the said fact, the income of the appellant could not have been calculated at a meagre amount of Rs. 3,000/- per month.

9. On the other hand, learned advocate Shri RH Mehta appearing for the respondent insurance company

has submitted that on the basis of evidence adduced before the Tribunal, the Tribunal has rightly calculated the amount of compensation payable to the claimants. It has been submitted by him that the fee receipts, on which the claimants wanted to rely upon cannot be looked into because those receipts have not been exhibited. Moreover, simply because fees were paid in respect of education of the children of the deceased, it would not mean that the deceased had paid the fees from his income because one cannot rule out the possibility of having ancestral property from which a person may go on spending without earning anything. It has been submitted by him that the Tribunal rightly ignored the documents which had not been exhibited, and according to him, on the basis of the evidence adduced before the Tribunal, the amount of compensation calculated and awarded by the Tribunal is just, legal and proper.

10. We have heard the learned advocates and have also gone through the record and proceedings. It is not in dispute that the fee receipts referred to by the learned advocate for the claimants have not been exhibited and, therefore, we would not like to look at them.

11. As stated hereinabove, the Tribunal has come to the conclusion that the deceased could have earned Rs. 3,000/- per month and upon deducting 1/3rd thereof by way of personal expenses, monthly dependency available to the appellants was worked out to Rs. 2,000/-. As age of the deceased was 33 years, applying multiplier of 17, the Tribunal has held that

the appellants are entitled to Rs. 4,08,000/- under the head of dependency benefit. To the said amount, Rs. 10,000/- by way of loss of expectation of life and Rs. 2,000/- towards funeral expenses have been added and thus, a sum of Rs. 4,20,000/- have been awarded by way of compensation.

12. So far as the documents, which pertain to sale/purchase of land are concerned, they would not show that the deceased had purchased the property from his income of a particular year. For the purpose of knowing income of the deceased, the claimants had placed on record the income tax return of the deceased.

13. It is pertinent to note that the deceased met with an accident on 12.11.1992. No return of income for the part of the accounting year during which he was alive had been filed.

14. The most relevant and reliable evidence adduced is the income-tax return, which the deceased had filed for the Assessment Year 1990-91 (Ex. 62). That was the only return filed by the deceased in his life -time. In the said return, under the head 'Profits and Gains from Business and Profession' an income of Rs. 45,224/- had been shown. The said amount was his share of net profit received from M/s. Akruti Builders, a registered firm. Except this, there is no reference to any other icnome from business in the said return.

15. According to the learned advocate for the

appellant, M/s. Akruti Builders had filed its first return for the year ending on 31st March, 1989 for 17 months and in the said return, total income of the said firm was shown as Rs. 48,074/-. Though M/s. Akruti Builders had shown income as Rs. 48,074/-, the Assessing Officer had issued notice to the said firm calling upon it to furnish certain details, but as no details were furnished, income of the firm had been assessed at Rs. 1,00,000/- and upon deducting Rs. 10,800/- by way of firm's tax, net income of M/s. Akruti Builders was determined at Rs. 89,200/- for the said year. As the deceased was having 75% of profit share in the said firm, the income for the said 17 months ending on 31st March, 1989 of the deceased was approximately Rs. 3,950/- per month. It is pertinent to note that the abovestated documents have not been exhibited and, therefore, we cannot look into them.

16. Thus, from the income tax return referred to hereinabove, the income of the deceased was not Rs. 30,000/- per month as claimed by appellant No. 1 in her evidence. In our opinion, the aforesaid income tax return (Ex. 62) is the only document, which can be relied upon for the purpose of determining income of the deceased. All other averments with regard to owning a car, giving education to children of the deceased in good schools, purchase of land for the purpose of developing societies, etc. cannot be looked into.

17. It is also pertinent to note that the deceased expired on 12th November, 1992 i.e. during the account

year 1992-93 and Assessment Year 1993-94. For the said year as well as for 2 years prior thereto, i.e. for Assessment Year 1991-92 & 1992-93, no income tax return had been filed by the deceased, which denotes that the deceased was not having any taxable income during the said years and his income had been decreased after filing of the last income tax return.

18. The above facts denote that in the past the deceased might have earned the aforesaid income, but thereafter the deceased did not have taxable income and,therefore, he did not file any income tax return. In the above set of circumstances, it cannot be believed that the deceased was having taxable income. Had he been having taxable income, he would have surely filed his income tax return.

19. In the aforesaid circumstances, in our opinion, it cannot be said that the Tribunal has committed any mistake in believing that dependency available to the appellants was Rs. 2,000/- per month. One can surely argue that the amount determined by the Tribunal is on the higher side because, for the two years prior to death of the deceased, he had not filed income tax returns. As no appeal has been filed by the insurance company, we do not go into the averment made by learned advocate Shri Mehta appearing for the Insurance company that multiplier of 17 is on higher side.

20. The learned advocates have relied upon some judgments which pertain to multiplier and the principle on which compensation should be awarded.

In view of the fact that there is no evidence forthcoming to support the appellants for determining higher amount of income, in our opinion, it is of no use referring to those judgments. We, therefore, do not refer to the judgments, which had been cited by both the sides.

21. Looking to the facts of the case, in our opinion, it cannot be said that income of the deceased has been wrongly assessed by the Tribunal. We do not find any substance in the appeal as there is no evidence to show that income of the deceased was in fact more than the amount which has been assessed by the Tribunal.

For the aforesaid reasons, the appeal is dismissed with no order as to costs.

(Anil R. Dave, J.)

(H.B. Antani, J.)

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